

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

January 25, 2007

An informational meeting of the Commission for Human Rights was held in the agency conference room on Thursday, January 25, 2006. Present at the meeting was Commissioner Iraida Williams. Absent were Alton W. Wiley, Jr., Camille Vella-Wilkinson, Alberto Aponte Cardona, Dr. John Susa, Jean Stover and Randolph Lowman. The meeting was called to order at 9:15 a.m.

No motion to approve the December 20, 2006 minutes was made. There was no quorum present.

Status Report: Michael D. Évora, Executive Director-

A written report was handed out. All new information will be in bold print.

Case Production Report - Attached

AGED CASE Report - Attached

Outreach Report - Attached

STATUS REPORT - COMMISSIONERS-

GENERAL STATUS: No report at this time.

OUTREACH: Commissioner Williams reported that she will be performing Housing outreach with one of her clients.

Commissioner Meeting -2- January 25, 2007

STATUS REPORT - LEGAL COUNSEL, Cynthia M. Hiatt

LITIGATION: Report attached.

LEGISLATION: Report Attached

REGULATIONS: No discussion at this time.

HEARING SCHEDULE: Discussed

DECISIONS: No discussion at this time.

The meeting adjourned at 10:00 a.m. The next regular meeting of the Commission is scheduled for Thursday, February 22, 2006 at 9:00 am.

Respectfully Submitted,

**Michael D. Évora
Executive Director**

**Notes taken by: B. Ross
EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS
JANUARY 25, 2007**

I. BUDGET

On September 8, 2006, I submitted the Commission's FY 2007

Revised and FY 2008 Budget Requests to the Governor. The particulars are as follows:

	FY 2007	FY 2007	FY 2008
	(Enacted)	(Revised)	(Request)
State	1,027,775	1,038,846	936,493
Fed.	323,478	286,550	311,111
Total	1,351,253	1,325,396	1,247,604

II. FEDERAL CONTRACTS

EEOC – For federal FY 2007, as of 12/31/06, according to EEOC Project Director Marlene Toribio, we have closed 52 cases. We will not receive our FY 2007 contract until February-March 2007.

HUD – For FY 07 (7/1/06 to date), according to HUD Project Director Angela Lovegrove, we have taken in 24 new housing charges, 23 of which are co-filed with HUD. Within this same time period, we have processed 20 housing charges, 18 of which were co-filed with HUD.

III. PERSONNEL

Allison Cote, Sr. Compliance Officer, remains out of work on full Worker's Compensation. Her tentative return date is January 31, 2007.

Tina Christy, Sr. Compliance Officer, returned from FMLA leave on January 2, 2007.

IV. OUTREACH – Refer to attached report.

V. GENERAL STATUS

●Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.

●Case Closures – Refer to attached report.

●Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload. The Commission successfully reduced the aged caseload by 86% in FY 2006 (from 14 to 2 cases).

●Commissioner (Re)Appointments – I contacted Christine DiFilippo (Governor's Office) on January 24 regarding (re)submission of the names of Cmsr. Susa, Cmsr. Vella-Wilkinson and Rochelle Lee for consideration by the Senate. Ms. DiFilippo said that the Governor

would “definitely” be submitting Ms. Lee’s name for Senate confirmation but that she had not yet received authority to formally make the submission. She added that she hoped to have a decision regarding the submission of Cmsrs. Susa and Vella-Wilkinson for reappointment following the next Governor’s Office staff meeting. A decision has not yet been made with respect to the submission of a candidate to replace Cmsr. Lowman.

¶Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. That number has steadily decreased. We ended FY 06 with 387 cases in inventory. As of 1/11/07, we had a total of 364 cases in inventory.

¶Annual Report – The Commission’s FY 2006 Annual Report is out to print. We expect to have the Reports for distribution by month’s end.

¶Fiscal Controls – On January 12, 2007, Governor Carcieri issued a memorandum on FY07 Fiscal Controls, intended to address the projected FY07 budget deficit. The memorandum is attached hereto.

Respectfully submitted,

Michael D. Évora

Executive Director

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: January 25, 2007

Recent developments are in bold.

American Legion Bd. of Gov's. v. American Legion #12

The Board of Governors for the respondent filed a petition for Receivership. The Commission filed a Motion for Relief from Stay of Proceedings so that the Commission and the complainants could file a Petition to Enforce the Decision and Order of the Commission in the matter of Cote, et. al v. American Legion #12. The wording of the apology was approved by the Court and was published. The property was sold. Case closed.

Aquidneck Island v. RICHR, et al.

This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale. RICHR's lien was placed against Cardinale not Aquidneck and Frank Gaschen advised plaintiff's attorney of this fact. Discovery is overdue. A motion to compel is scheduled for February 2 in case the discovery is not filed by then.

Babbitt v. Crescent Park Manor, et al.

The Commission intervened as a party plaintiff in this case. Discovery is continuing.

Bagnall v. RICHR and WLWC et al.

The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. The parties are circulating a briefing stipulation.

Gaffney v Town of Cumberland et al

The respondent appealed the Commission decision. The parties and the Commission filed briefs. The case was assigned to Judge Savage. Judge Savage held a status conference with the attorneys, including Commission counsel, on January 21, 2005. Judge Savage indicated that she was close to issuing a decision but wished to give the parties an opportunity to discuss resolution. After a number of settlement attempts, it did not appear that resolution was near. On 1/4/06, CMH wrote a letter to the parties stating that if she did not hear from them by 2/6 that the case was close to resolution, she was planning to write Justice Savage to ask her to issue her decision. Not having heard from the parties, on 2/8/06, CMH wrote Justice Savage and asked her to render her decision as it did not appear that the parties would resolve the matter. On November 30, 2006, after seeking signatures from the other parties which could not be obtained, CMH sent a letter asking Justice Savage to consider issuing a decision in the near future because of Mrs. Gaffney's age.

Horn v. Southern Union Co.

This is a case filed in federal District Court in Rhode Island. Judge Smith certified a question to the Rhode Island Supreme Court: What is the statute of limitations for the Rhode Island Civil Rights Act, Title 42, Chapter 112 of the General Laws of Rhode Island (RICRA). The RICRA prohibits discrimination in contracts, including discrimination in employment contracts. The Commission has agreed to join an amicus brief that will argue that the proper statute of limitations is three years. (There is an argument that the statute of limitations is one year.)

Idowu v. Rhode Island Commission for Human Rights and Cohoes Fashions of Cranston, Inc.

The complainant appealed the Commission Decision and Order. The respondent filed a motion to dismiss the appeal on the grounds that it was filed too late. The Commission filed the administrative record on May 17, 2006. Hearing on the respondent's motion to dismiss was held on June 6, 2006. Judge McGuirl appeared to be ready to rule for the defendants, but offered Mr. Idowu the opportunity to submit more information. He accepted the offer. He retained an attorney who filed a last-minute objection to the motion to dismiss and appeared at the hearing on July 11, 2006. On this date, Judge McGuirl appeared to see the merit of complainant's argument that, even though the decision was dated, the decision did not specifically say that the date was the mailing date. (A party must appeal within thirty days of the

mailing date.) However, she did not seem to feel that the document that the complainant filed within thirty-one days of the mailing date was sufficient to constitute a complaint. She will consider the matter and issue a decision on the motion to dismiss from the bench at a later date.

Joint v. DeMarkey and Rhode Island Commission for Human Rights

The individual respondent filed an appeal of the Commission Decision and Order. The Commission issued the decision on attorney's fees. The respondent filed an amended appeal to include its appeal of the Commission Decision on Attorney's Fees. The Commission filed the administrative record. The briefs were filed. The appeal was assigned to Special Magistrate Joseph Keough. He rendered a decision on September 22, 2006. He held for the Commission on several procedural issues, but reversed the decision, holding that the complainant had not proved sex discrimination. He said that the respondent had waived his right to raise the issue that the charge was not timely filed. He held that the Commission complaint had given the respondent sufficient notice of the charges against him. He overturned the Commission determination that the respondent had discriminated against the complainant because of her sex, holding that it is not sex discrimination if a supervisor terminates an employee because their voluntary sexual relationship has ended. The respondent sent Magistrate Keough a proposed Judgment and Order. There is a procedure for appealing a magistrate's Order to the Superior Court for review by a Superior

Court judge. The time period for that appeal is short (48 hours), so the Commission filed that appeal on September 27. The matter was scheduled to be heard on the Formal and Special Cause calendar on October 4, 2006. Justice Rogers wrote the parties a letter stating that Chief Justice Williams, in a series of monthly letters, has conferred on Magistrate Keough all the powers of a Superior Court judge and that therefore, appeal was to the Rhode Island Supreme Court. Ms. DeMarkey and the Commission filed a Petition for Certiorari and Memorandum in Support. In the meantime, Mr. Joint's attorney filed a Motion for Attorney's Fees, asking that the Superior Court order the Commission to pay Mr. Joint's attorney's fees under the Equal Access to Justice Act. The parties agreed that this matter would pass until the Supreme Court acted on the Petition for Certiorari. The parties also agreed that the Commission would delay discovery, on the issue of Mr. Joint's eligibility to claim attorney's fees, until after the Rhode Island Supreme Court acted on the Petition. Mr. Joint has filed for a third extension of time to file his objection to the Petition.

King v. City of Providence Police Dept.

This is a case in which the Commission issued a decision finding that the City of Providence had denied Mr. King a position as a police officer because of his age. The Commission had not yet determined damages when the FUD's decision came down, so the Commission decision was not final and the respondent had the opportunity to have the case heard in Superior Court. The respondent elected to have the matter heard before the Superior Court. Ms. Hiatt has been

subpoenaed to testify at the trial. The trial had been rescheduled to late September. The plaintiff was going to request another continuance; it has apparently been granted. The Commission has received no word on a new trial date.

Laboy v. Stat Health Services

Counsel is trying to locate respondent's officers in order to ensure compliance with the Commission Decision and Order.

Ponte v. GTECH

The plaintiff filed a records subpoena for her case file, several named case files and any other disability charges against GTECH. The Commission provided copies of the complainant's cleared file. The Commission objected to providing any other records on the grounds that such dissemination would violate the Health Care Confidentiality Act and that redaction of the health care information would be burdensome. The hearing on a motion to compel RICHR to produce was heard 9/27. The parties agreed on an Order. Still waiting for Order to be filed in Court.

RICHR and Butler v. Kong

The complainant elected to have this housing matter resolved outside of the Commission. AG refused to take case because of lack of cooperation from complainant. Suit was filed on behalf of the complainant and service has been effectuated.

RICHR and Rossi v. Attruia

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-29-05. Judgment entered against Defendant. Payments on the judgment continue to be made on schedule.

RICHR v. Cardinale

A complaint for enforcement was filed with request for TRO which was granted. Hearing on Preliminary Inj. continued to 8/15. No service on respondent. Atty. entered for respondent and hearing was 9/29 on TRO and Motion to Attach. The hearing scheduled was continued to 1/12 at the request of defendant's attorney as the defendant was incarcerated. The hearing was held on 1/12. The parties will submit any additional arguments that they wish to raise and Justice Thunberg will then take the case under advisement.

RICHR v. Cardinale, et al.

A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act has been filed against Norman Cardinale, Mary Cardinale, Newport Developments LLC, AEGIS Lending and MERS. A lis pendens was filed in the Land Evidence Records for the town of Scituate. AEGIS and MERS were served.

RICHR v. Cardinale, et al.

A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act has been filed against Norman Cardinale, Mary Cardinale, Onorato Cardinale,

Rebecca Anthony and Aquidneck Island Developments, LLC. A lis pendens will be filed in the Land Evidence Records for Middletown.

RICHR and Powell v. Cinotti

The respondent elected to have this housing matter resolved outside of the Commission. Suit was filed on behalf of the complainant and a copy of the complaint was sent to the attorney for the respondents who agreed to accept service. Answer filed and discovery was to commence. Respondent made offer to settle and the complainant agreed. Angie sent out the withdrawal with settlement form to the complainant. The respondents are seeking additional time to pay.

RICHR and Lovegrove v. Escolastico

Default was entered against the defendant. Judgment was obtained and sent to FL lawyer for collection. Affidavit executed for FL attorneys so that RI judgment can be entered in Ct. and given full faith and credit.

RICHR and Scurry v. C & H Investments, et al.

The defendants were defaulted and judgment entered. Judgment was obtained and sent to FL lawyer for collection. Affidavit executed for FL attorneys so that RI judgment can be entered in Ct. and given full faith and credit. Settled and funds distributed.

RICHR and Morin v. Teofilo Silva, et al.

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-24-05. Service of the complaint will be made once respondent can be located. Motions for extended time within which to serve and for special service were filed. The motions were granted. Service has not been perfected yet.

RICHR and Zeigler v. Laura Sitrin, Finance Director of the City of Newport

Case resolved. Commission must annually monitor City training.

RICHR v. Warner, et al.

This case was settled but the defendants had not complied with the terms. Defendants were served with process. The paperwork was then rec'd and the case closed.

Seymour v. Harvard Pilgrim Health

Motion of the defendant to dismiss the complaint for failure to comply with discovery was down for hearing on May 7, 2006. Plaintiff produced discovery, case is moving forward in Court.

South Kingstown School Committee et al. v. Stephen Alberghini and the Rhode Island Commission for Human Rights

The respondents have appealed the Commission Decision and Order.

The parties have agreed that the Commission will delay filing of its record until motions pending before the Commission have been

decided.

Tucker v. Blue Cross

The complainant filed an administrative appeal of the Commission's finding of no probable cause. The administrative record was filed in Court.